

TO BECOME CHAPTER 4 OF THE HICKORY CITY CODE

ORDINANCE AMENDING CHAPTER 4 (ANIMALS AND FOWL) OF THE CODE OF
ORDINANCES OF THE CITY OF HICKORY

WHEREAS, the City of Hickory has the authority, pursuant to N.C.G.S. § 160A-186 to regulate the keeping of domestic animals; and

WHEREAS, the City of Hickory has the authority, pursuant to N.C.G.S. § 160A-187 and § 67-4.5 to regulate animals which are dangerous to persons or property; and

WHEREAS, the City Council has determined that it is in the interest of the public health, safety and welfare to amend Chapter 4 of the City Code to address animal matters;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HICKORY THAT:

Chapter 4 (Animals and Fowl) of the Code of Ordinances of the City of Hickory is hereby repealed in its entirety and the following substituted in lieu thereof:

“Chapter 4 ANIMALS AND FOWL”

ARTICLE I. GENERAL

Sec. 4-1. Policy. It is the policy of the Hickory City Council to effectively enforce the provisions of this chapter.

Sec. 4-2. Findings. The Hickory City Council makes the following findings to accomplish the objectives of vigorous and effective enforcement of this chapter:

- (1) That the presence of a dog when off-premises of its owner's property and not under the exclusive control of its owner, often creates substantial anxieties and concerns for the safety and free movement of people and, therefore, the owner has an obligation to the citizens of the City to effectively confine and physically control his/her dog.
- (2) That the possibility of a dog bite causes serious anxiety for citizens of the City and, therefore, owners have an obligation to prevent the creation of that apprehension and concern.
- (3) That a dog owner has a responsibility to be aware of any possible dangers to children, who might be unable to fully appreciate the possible danger presented by a dog and a dog's reaction to a young child.

- (4) That a dog owner has a responsibility to be aware of any possible dangers to disabled and elderly persons who may not be able to physically ward off an aggressive dog.
- (5) That Animal Control Officers must have sufficient authority to impose preventive measures, to seize animals, and, if necessary, to determine ownership rights.
- (6) That the City must adopt civil penalties, fines and other sanctions as measures to protect the citizens of the City and to declare that the ownership of pets entails responsibility on the part of the owners.

Sec. 4-3. Purpose. It shall be the purpose of this chapter to prohibit certain acts, omissions and conditions which interfere with the health, safety and general welfare of the inhabitants of the City; to protect the public from unvaccinated, diseased, stray, roaming, or dangerous animals; to make unlawful acts of animals that interfere with the enjoyment of property or the peace and safety of the community; to protect animals from abuse or conditions harmful to their well-being; and to provide for the peace and dignity of the City.

Sec. 4-4. Definitions. The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Animal means any nonhuman vertebrate creature. Unless otherwise excepted, the term animal includes, but is not limited to, dogs, cats, rabbits, fowl, chickens, horses, cows and goats.

Animal shelter means any premises designated by the City for admitting and caring for all animals found running at large or otherwise impounded in accordance with the provisions of this chapter.

At large means an animal roaming unrestrained beyond the owner's exclusive control.

Chief of Police means the Chief of Police of the City of Hickory or his/her designee.

Dangerous Dog or Potentially Dangerous Dog means such dog that is deemed to be Dangerous or Potentially Dangerous pursuant to North Carolina General Statute 67-4.1 et seq.

Days means calendar days, unless otherwise stated herein.

Domesticated means any animal traditionally kept, cared for, sheltered, fed or harbored for use as a companion animal.

Exotic pet is any animal that is not classified as domesticated, livestock or a wild animal. This definition does not include feral animals.

Feral means an animal of a species normally domesticated that has reverted to a wild state.

Fowl means any bird traditionally associated with sport, farming or production including, but not limited to poultry and game birds.

Harboring an animal means feeding or sheltering an animal seven days or more unless the animal is being boarded for a fee.

Impounded means any animal, which taken into the custody of the Animal Control Supervisor, Animal Control Officer, or an Animal Shelter controlled by either the City of Hickory, Catawba County, or another governmental entity.

Kennel means any person, partnership or corporation currently licensed by the State Department of Agriculture and engaged in the business of boarding, breeding, buying, letting for hire, training for a fee or selling dogs and/or cats.

Owner means any person who or legal entity that has a possessory property right in an animal or harbors an animal or has it in his/her care, custody or control, or knowingly permits said animal to remain on any premises occupied by him or her. Presumption of ownership may be rebutted by proof that such person has no property right in the animal, is neither harboring nor caring for the animal and, in the case of a dog, is not the licensed owner. Owner does not include veterinarians or commercial kennel operators temporarily maintaining on their premises for a period of less than 30 days animals owned by other persons.

Owner's real property means any real property owned or leased by the owner of the animal, but does not include any public right-of-way or a common area of a condominium, apartment complex or townhouse development.

Pet means any domesticated animal kept for pleasure as opposed to utility. A police dog or a dog assisting the blind or deaf is not considered a pet. A dog kept as a guard dog is considered a pet. Any animal one can generally purchase at a local retail pet store is considered a pet.

Secure enclosure means an enclosure from which an animal cannot escape by means of digging under or jumping over the enclosure or otherwise becoming free unless freed by the owner. A motor vehicle shall not constitute a secure enclosure. Minimum space and height requirements and other specifications for secure enclosures shall be obtained from the Animal Control Supervisor based upon the breed, age, height, and weight of the animal.

Secure fence means a locked fence that is a minimum of four feet high and secure enough to contain a particular dog at all times.

Tether means fastening an animal so that it can range only within a set radius.

Vicious animal means an animal that has, without provocation killed or inflicted serious injury upon a human being such that professional medical treatment was required. An injury is considered serious if it causes great pain and suffering.

Wild animal means any animal which can normally be found in the wild state, particularly those feral, dangerous or non-domesticated animals which generally do not live in or about the habitation of humans, including, but not limited to, deer, lions, monkeys, raccoons, skunks, squirrels, tigers, venomous snakes and wolf hybrids.

Sec. 4-6. Administration.

For purposes of administering this chapter, the City Manager may create an Animal Control Unit within a City department, designate a local agency or designate other City departments to perform some or all of the functions of said unit. There shall be an Animal Control Supervisor who shall have overall responsibility for administering this chapter and for supervising the Animal Control Officers. Sworn police officers shall have all the powers as an Animal Control Officer.

Sec. 4-7. Powers of Animal Control Officers

The powers of Animal Control Officers shall be:

- (a) Take up and deliver any animal at large in violation of this chapter to the animal shelter.
- (b) Issue all appropriate permits, citations and notices required for the enforcement of this chapter.
- (c) Make recommendations to the Animal Control Supervisor to declare an animal to be a Potentially Dangerous Dog, as defined in G.S. 67-4.1.
- (d) Organize and carry out canvasses of the City, including homes and any businesses; and, insuring that the provisions of this chapter and state law related to animal control are adhered to.
- (e) Investigate complaints of City residents with regard to animals.
- (f) Protect animals from neglect or abuse.
- (g) Enforce state law and city ordinance pertaining to animals.
- (h) Investigate all reported animal bites or other exposures to suspected rabid animals, and submit reports to the Catawba County Health Director.

Sec. 4-8. Interference, or concealment.

- (a) It shall be unlawful for any person to interfere with, hinder, resist, or obstruct the Animal Control Officer while the Animal Control Officer is carrying out any duty created under this chapter.
- (b) It shall be unlawful for any person to conceal any animal for the purpose of evading any federal, state or local law.

Sec. 4-9. Wild animals.

No person shall keep or permit to be kept on his/her premises a wild animal. This section shall not apply to zoological parks, animal exhibitions or circuses nor apply to the possession, exhibition or handling of reptiles by employees or agents of duly constituted museums, laboratories, educational or scientific institutions in the course of their educational or scientific work.

Sec. 4-10. Injunctions. Any provision of this chapter that makes unlawful a condition existing upon or use made of real property may be enforced by injunction and order of abatement. When a violation of such a provision occurs, the City or any resident of the City may apply to the general court of justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property.

4-11. Vicious Animals.

- (a) The Animal Control Supervisor has the authority to declare an animal vicious. Any animal declared to be a vicious animal shall be immediately impounded and held for a ten calendar-day quarantine period and then humanely destroyed unless an appeal is filed as prescribed in this chapter. If an appropriate appeal is filed, the dog shall be held at the shelter, at the owner's expense, pending the final outcome of the appeal.
- (b) The owner shall deposit with the shelter the anticipated fee for the estimated time of the appeal beginning with the first day of quarantine. Such amount shall be calculated based on transportation fees, boarding fees and any known veterinary care the animal is in need of at the time the quarantine period begins. Payment of the fees is a required part of the appeals process. If the owner fails to pay the determined amount of fees, the appeal application will be deemed incomplete and no appeal heard.
- (c) Nothing in this section shall prohibit the owner from voluntarily releasing the dog to be destroyed in a humane way.

4-12—4-20. Reserved.

ARTICLE II. REGULATION AND DISPOSITION OF ANIMALS

Sec. 4-21. Restraint of animals.

- (a) Every person owning or having possession, charge, care, custody or control of any animal shall keep such animal exclusively upon the owner's real property. However, such animal may be off the owner's real property if it is under the physical control of a person and physically restrained by a chain, leash or harness and held in the hand of said person. An animal is not considered restrained if it is on a chain, leash, or harness, but not under the control of the owner or caregiver. Exceptions to this section are as follows:

- (1) Service animals trained to provide assistance to persons impaired in sight, hearing, mobility, or any other impairment, do not have to be under physical restraint while off the owner's premises if the dog is under the impaired person's direct control and is obedient to that person's commands. The Animal Control Officer or any sworn police officer may request proof of assistance animal registration to satisfy this exception.
 - (2) A working police dog in the course and scope of its duties.
- (b) If an animal is kept on the premises by a fence, the fence must be adequate to contain the animal. If such fence is an effective, working invisible fence, then there must be a visible, permanent sign on the premises stating that there is an invisible fence.

Sec. 4-22. Public nuisance.

- (a) The keeping of any animal in such manner or in such numbers as to constitute a public nuisance is hereby prohibited. For the purposes of this section, a public nuisance shall include, but not be limited to, the following:
- (1) The keeping of any animal which by continued or repeated howling, yelping, barking or otherwise, causes loud noises which would disturb the quiet, comfort or repose of a reasonably prudent person.
 - (2) The keeping of any animal which is at large.
 - (3) Allowing or permitting an animal to damage the property of anyone other than its owner, including, but not limited to, turning over garbage containers, or damaging gardens, flowers, or vegetables, or defecating upon the property of another.
 - (4) Maintaining animals in an unsanitary environment which results in unsightly or offensive animal waste, litter, or odor which would disturb a reasonable person.
 - (5) The keeping, possession, harboring or feeding of animals; wild, feral or domesticated, which threaten the public health, safety and welfare of the community.
 - (6) Failing to confine a female animal while in heat in a secure enclosure in such a manner that she will not be in contact with another animal, or attract other animals.
 - (7) The tethering of any animal to public property or in a public right-of-way.
 - (8) An animal which damages or scratches the property of another.
 - (9) This section shall not apply to a working police dog in the course and scope of its duties.

Sec. 4-23. Preventive measures for regulation of animals.

- (a) Upon the finding of any violation in this chapter, or the Animal Control Supervisor making a declaration that a dog is potentially dangerous pursuant to G.S. 67-4.1, the Animal Control Supervisor shall have the authority to require the owner of a dog to comply with specific preventive measures, as described below. Said list is for illustrative purposes only and is not intended to be comprehensive or to exclude any act of the Animal Control Supervisor:
- (1) Necessary repairs to any fence or enclosure.
 - (2) Measures to ensure that a gate will remain secure.
 - (3) A secure fence or any other similar device that would provide greater assurance for the confinement of the dog.
 - (4) Requiring the owner to tattoo or microchip the dog at the owner's expense.
 - (5) Posting of "Beware of Dog" signage.
 - (6) The City may impound the animal until such fence or gate is fabricated or improved to the satisfaction of the City. The owner of the animal is responsible for all impoundment fees and costs incurred in fabricating or improving such fence or gate.
 - (7) In addition to the preceding measures, if a dog is found to be Potentially Dangerous or Dangerous pursuant to G.S. 67-4.1 et. seq., the city shall require the following preventive measures in addition to any remedies set forth in said statute:
 - a) The dog may not be left unattended on the owner's real property unless confined indoors or in a secure enclosure. The City may impound the animal until such a structure is properly erected with the owner being responsible for all impoundment fees in addition to costs incurred in constructing such pen. The owner shall notify the Hickory Police Department immediately if said dog escapes or is otherwise freed from the secure enclosure other restraint.
 - b) The dog may not go beyond the owner's real property unless securely restrained and muzzled.
 - c) As an alternative to subsection (a) and (b), the owner is permitted to transfer ownership of the dog to an individual outside Hickory city limits or to the Catawba County Animal Shelter. If the owner wishes to transfer the dog outside the city limits, the dog in the interim may be impounded. The owner shall be responsible for all impoundment fees. The owner of a dangerous dog must provide the Hickory Police Department with written notice of transfer of ownership or possession stating the name and address of the new

owner or possessor of the dog and with written notice to the new owner or possessor specifying the dog's dangerous behavior and the Animal Control Supervisor's declaration that the dogs are dangerous. Additionally, The owner of a dangerous dog must notify the Hickory Police Department in writing of any change in the owner's address or location where the dog resides.

- (b) If the Animal Control Officer determines that a dog owner must take specific preventive measures, the Animal Control Officer shall make reasonable efforts to notify the owner by a written order, stating the reasons that preventive measures are required, identifying the specific preventive measures that must be implemented, and stating the designated time period for compliance with the written order. The written order shall further state that failure to comply within the time period prescribed may result in the assessment of civil penalties and/or seizure of the animal. The Animal Control Officer shall have the authority to allow for reasonable extensions of time limits based on good faith progress of implementation of the preventive measures. Any approved extensions shall be in writing.
- (c) It shall be unlawful for an owner to fail to comply with a written order to take preventive measures within the designated time for compliance stated in the written order or any extension thereof. Additionally, the Animal Control Officer shall have authority to seize and impound the animal if the owner fails to comply with the aforementioned order. Each day of non-compliance shall constitute a new violation.
- (d) Any dog previously declared to be Dangerous or Potentially Dangerous that has been subsequently found to 1) inflicted a bite on a person that resulted in broken bones or disfiguring lacerations or required cosmetic surgery or hospitalization, 2) killed or inflicted serious injury upon a domestic animal when not on the owner's real property, 3) approached a person when not on the owner's property in a vicious or terrorizing manner in an apparent manner of attack, shall be impounded and destroyed in a humane manner.

Sec. 4-24. Seizure and Impoundment.

- (a) In addition to the provisions set forth in section 4-23, an animal which the Animal Control Supervisor or his designee believes is either abused, overcrowded, or receiving insufficient care, or an animal in violation of section 4-22 may be subject to immediate seizure and impoundment. If necessary, an animal control officer may tranquilize the animal by way of a dart gun or other method to subdue or trap such animal. Any person finding any animal upon his/her property, in violation of section 4-22, to his/her injury or annoyance, shall be authorized to restrain such animal in a humane manner and to thereupon notify the Hickory Police Department, who shall take possession of the animal for impoundment. The animal may, consistent with the provisions of this chapter, be redeemed by the owner upon payment of all civil citations pursuant to Hickory City Code 1-9 and impoundment fees. Upon failure of the owner to redeem the animal as set forth herein, the animal shall be disposed of by the animal shelter pursuant to County regulations. Neither the City of Hickory nor the Hickory Police Department shall be under any obligation to notify the owner of the

seizure the animal, however the Hickory Police Department shall make a good-faith effort to notify said owner.

- (b) In addition to the provisions established in Section 4-23 regarding Potentially Dangerous Dogs and Dangerous Dogs, the Potentially Dangerous Dog or Dangerous Dog may be impounded during the appeals process. When the Animal Control Officer serves the owner with a written order of seizure, it shall be unlawful for the owner to fail to comply with the order or to interfere with the Animal Control Officer. A sworn officer shall accompany the Animal Control Officer to seize the animal.
- (c) Any animal which appears to be lost, running at large, stray or unwanted, or which is found to be not wearing a currently valid rabies vaccination tag, as required by state law or this chapter or not under restraint in violation of this chapter, may be impounded by Animal Control and confined in the animal shelter in a humane manner. Impoundment of such an animal shall not relieve the owner thereof from any penalty that may be imposed for violation of this chapter.
- (d) Upon impounding an animal, the Animal Control Officer shall inspect the animal for identification such as a tag, microchip or tattoo and make a reasonable effort to notify the owner and inform such owner of the condition whereby the animal may be reclaimed. Any owner concerned about the loss or possible impoundment of an animal must check the animal shelter since all animals seized or impounded under this ordinance shall be available for inspection and reclamation during the shelter's normal business hours.

Secs. 4-26—4-30. Reserved.

ARTICLE III. LIVESTOCK, FOWL & EXOTIC PETS

Sec. 4-31. Keeping of swine and goats.

- (a) The keeping of hogs, pigs, swine or goats in any building, pen, enclosure or other place within the corporate limits of the city is hereby declared a nuisance and injurious to adjoining property owners and to the public, and the keeping of hogs, pigs, swine and goats within the corporate limits is, for the protection of the public health, prohibited. Provided, however, one and only one goat may be kept as a family pet, provided that there is available on the premises where it is kept pasture of at least 65,000 square feet for the use of the goat. Any stable or other structure in which the goat is kept shall be maintained in a clean and sanitary condition and that the stable or shelter shall not be located nearer than 50 feet from any residence other than the residence of the owners of the goat. The conditions and surroundings where the goat is kept shall be maintained in a manner approved by the director of sanitation.
- (b) One and only one pig may be kept as a family pet, provided that such pig shall not weigh more than 100 pounds and be of that strain or type of pig known as Sus, species scrofa, variety f. domestica (popularly known as Vietnamese pot-bellied pig), and provided further that the place where the pig is kept shall be maintained in a clean and sanitary condition and maintained in a manner approved by the director of

sanitation, and shall further be kept in such a manner that no odors from such pig shall be offensive or disturbing to residents of surrounding or adjoining properties.

Sec. 4-32. Maintenance of pens, coops, etc., where fowl are kept.

Any person who owns or maintains pens, coops or shelters in which chickens, turkeys, ducks or other fowl are kept shall maintain such pens, coops or shelters in a sanitary condition. Manure accumulating in such pens, coops or shelters shall be placed in a bin which shall be watertight and so constructed that it is flyproof, or in a watertight barrel with a tightfitting lid, every five days. Effective fly control methods, such as the use of an approved insecticide, shall be practiced during the fly breeding period from April 15 to November 1 of each year.

Sec. 4-33. Maintenance of stables.

It shall be unlawful for any person who owns, operates or maintains a stable in the corporate limits, in which horses, mules or cows are kept, to keep such stable in an unclean or unsanitary condition. There shall be provided a bin or pit which shall be watertight to prevent seepage and so arranged that it is flyproof, or a watertight barrel with a tightfitting lid. Manure accumulating in such stable shall be placed in the bin, pit or barrel each day, and the same shall be removed from such stable at intervals not longer than five days, beginning on March 15 and continuing until the following September 15, and at intervals of one week from each September 16 to the following March 14.

Sec. 4-34. Location of stables, lots, pens, etc., near residences.

No person shall erect, locate or maintain upon any lot within the city any cow, horse or mule stable or any chicken lot, pen or shelter nearer than 50 feet to any residence other than the owner's personal dwelling. No shelter, pen or lot or group of shelters, pens or lots housing three or more dogs over the age of six months shall be erected, located or maintained within 50 feet of any residence other than the residence of the owners of such dogs within the city.

Sec. 4-35. Fowl running at large.

No person within the city shall permit chickens, guineas, turkeys, geese, ducks, pigeons, or other domesticated fowl to run at large.

Sec. 4-36. Bird sanctuary.

The area embraced within the corporate limits and all parks and grounds used for municipal purposes are hereby declared a sanctuary for the protection of birds. The police officers of the city shall enforce strictly the state law for the protection of birds within such area. The City may post appropriate signs indicating that such area is a bird sanctuary.

Sec. 4-37. Catching, shooting, etc., squirrels.

No person shall catch, shoot, kill or entrap any squirrel within the city limits; provided, that this section shall not apply to squirrels killed, caught or trapped with the permission of and under the supervision of the police department.

Sec. 4-38—4-40. Reserved.

ARTICLE IV. APPEALS/MISCELLANEOUS

Sec. 4-41. Severability. If any section or part of this chapter should be held invalid for any reason, such determination shall not affect the remaining sections or parts, and to that end, the provisions of this chapter are severable.

Sec. 4-42. Appeals

- (a) An owner of a dog declared Potentially Dangerous or Dangerous shall follow the appeal process established in G.S. 67-4.1 et. seq.
- (b) To appeal any other determination or finding in this ordinance such as a finding or determination that an animal is vicious or is a public nuisance, the following provisions shall apply:
 - 1. The filing of a written appeal stays all proceedings in furtherance of the action appealed, unless the Animal Control Supervisor whose decision is being appealed certifies to the Chief of Police, after the appeal is filed, because of facts stated in the certification: (i) that a stay would cause immediate peril to life or property; or (ii) that the solution appealed from is transitory in nature, and therefore an appeal would seriously interfere with enforcement of the provisions of the Hickory City Code or the operation of any program in the City of Hickory.
 - a. In such case, proceedings shall not be stayed other than by a restraining order, which may be granted by a court of record having jurisdiction in Catawba County, North Carolina.
 - b. The Animal Control Supervisor shall transmit to the Chief of Police, as appropriate, all papers constituting the record upon which the action appealed is taken and shall provide a copy of such record to the City Clerk.
 - 2. Within thirty (30) days of the receipt of the written appeal, the Chief of Police shall hold at least one (1) hearing on the appeal. Following the close of the hearing, the Chief of Police shall take final action based on the procedures and requirements of this Section.
 - a. In exercising the appeal power, the Chief of Police shall have all the powers of the official from whom the appeal is taken, and the Chief of Police may reverse or affirm wholly or partly or may modify the decision being appealed.
 - b. If the Chief of Police determines that it is necessary to obtain additional evidence in order to resolve the matter, he shall remand the appeal to the Animal Control Supervisor from whom the appeal is taken, with directions to obtain such evidence and to reconsider the decision in light of such evidence.

3. The Chief of Police may reverse or modify an order, requirement, decision, or determination of the Animal Control Supervisor. The decision of the Chief of Police shall be supported by written findings of fact. After the hearing, the Chief of Police has ten (10) days to make the final decision.
 - a. Within five (5) days after a final decision of an administrative appeal is made by the Chief of Police, copies of the written decision shall be sent to the appellant and filed in the office of the City Clerk, where it shall be available for public inspection during regular office hours.
 - b. Contemporaneous with the filing of the decision of the Chief of Police, a written copy of the Chief of Police's decision shall be sent, via First Class Mail or personal service, to the Appellant at the Appellant's last known address, or such other addresses as the Appellant may request in writing in the appeal documents.
4. Any person who is directly affected by a decision of the Police Chief may appeal the decision to the Superior Court of Catawba County, North Carolina. An appeal to Superior Court must be filed within thirty (30) days of the filing by the Chief of Police of the decision in the office of the City Clerk.
5. Individuals participating in the appeals process set forth above may, at their own cost and expense, be represented by legal counsel if they so desire.
6. Only individuals licensed as attorneys to practice law in the State of North Carolina are permitted to represent individuals in these proceedings.
7. If an animal has already been found to be a nuisance, vicious, dangerous, potentially dangerous, or otherwise found to be in violation of this chapter, and the appeal process has either lapsed or has been exhausted, no appeals may be filed regarding future citations written under these sections.

Section 4-43—4-40. Reserved.